

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

**THE HON'BLE SRI JUSTICE GUDISEVA SHYAM
PRASAD**

Crl.A.No.1163 of 2011

Date: 30.07.2018

Between:

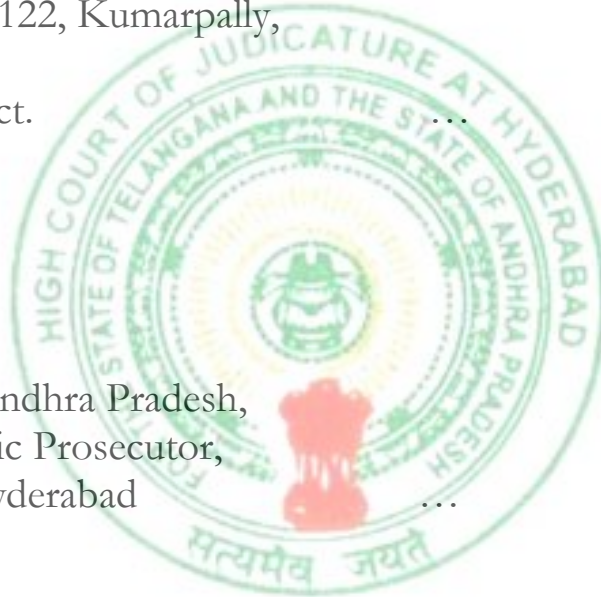
Ramachandroju Sreedhar,
S/o.Lingamurthy,
aged about 31 years,
Occ: Gold Worker,
R/o.H.No.4-8-122, Kumarpally,
Hanamkonda,
Warangal district.

Appellant

And

The State of Andhra Pradesh,
rep. by its Public Prosecutor,
High Court, Hyderabad

Respondent



Counsel for the Appellant : Mr. Venkat Rao Ravulapalli

Counsel for the Respondent: Public Prosecutor (TS)

The Court made the following:

Judgment: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

The accused No.1 in Sessions Case No.280 of 2008 on the file of the III Additional Sessions Judge, Warangal, filed this appeal against judgment dated 27.07.2011, whereby he was convicted for the offence under Section 302 I.P.C. and *inter alia* sentenced to life imprisonment and to pay a fine of Rs.1000/- and in default, to suffer simple imprisonment for a period of 3 months.

2. The case of the prosecution in brief, is stated as hereunder:

That one, Spandana (hereinafter referred to as 'the deceased') got married to A-1 on 08.12.2004. That A-2 is the mother of A-1, A3 to A5 are his sisters and A6 and A7 are his brothers-in-law. That, at the time of marriage, A1 to A5 demanded Rs.1.20 lakhs net cash, apart from other articles worth Rs.80,000/- as dowry and the same were given to A-1 in the presence of their caste people and the marriage was conducted as per the customs of their community. That after the deceased was blessed with a female child out of the wedlock, for few months, the accused looked after the deceased well, but later, A-1 got addicted to alcohol and started harassing the deceased mentally and physically to bring additional dowry of Rs.50,000/-; that the other accused supported A-1 and warned the deceased that they would perform another marriage of A-1 with a beautiful girl, if she failed to bring additional dowry and harassed her for being short and not beautiful. That, as the deceased could not bear the physical and mental harassment, she approached her family; that in the month of

January, 2007, the deceased along with her mother and brothers approached the family counseling centre, Hanamakonda, where counseling was held; that A1 to A7 attended the same and promised to look after the deceased well, without any harassment and that the matter was settled amicably on 10.02.2007. That, PW-6 who is the owner of the house where the deceased and accused were living, also asked the accused not to harass the deceased. That, the mother and sister of A-1 were living in another rented house, which is one furlong from the house where the deceased and accused were living; that even after the counseling, A-1 to A-7 did not change their attitude and continued harassing the deceased mentally and physically for additional dowry and that, on the fateful day i.e. 04.07.2007 at about 1.15 p.m., A-1 came to the house and started harassing the deceased by asking her to fall on the feet of his mother and threatened to bring another beautiful lady if she failed to do so; that when the deceased refused to fall on the feet of his mother, A-1 starting beating her indiscriminately. That A-1 became wild and picked up kerosene bottle, poured it on the body of deceased and set her to fire; that unable to bear the pains, the deceased raised hue and cry and went towards A-1, but he did not try to extinguish the flames, that the neighbours and the house owner i.e. PW-6 rushed to the spot and extinguished the flames; that in the meanwhile, PW-1 also rushed to the scene and extinguished the flames; that PW-1 called 108 emergency van and shifted the deceased to MGM hospital,

Warangal, for treatment, that while the deceased was undergoing treatment, on requisition, PW-19 Judicial First Class Magistrate for Prohibition and Excise, Warangal, visited MGM Hospital, Warangal and recorded the dying declaration of the deceased; that later the deceased was shifted to Osmania General hospital, Hyderabad, for better treatment and that while undergoing the treatment, the deceased succumbed to burn injuries on 07.07.2007 at 4 p.m.

That, on 07.07.2007 at about 2200 hours, on receiving telephonic information from SHO, Afzalgunj, about the death of the deceased, immediately, PW-21, the Sub-Inspector of Police, Hanamakonda, deputed PW-20 to visit the Osmania General Hospital; that on 08.07.2007 at 1030 hours, PW-20 received the death intimation from the Medical officer; that PW-17 conducted inquest over the dead body in the presence of the mediators PW-11 and another and sent the dead body for autopsy. That, on 08.07.2007, PW-20 returned to P.S., Hanamakonda and based on the death intimation, altered the provision of law to Sections 302, 498(A) I.P.C. and Sections 3 and 4 of Dowry Prohibition Act and sent Express Memos to all the concerned; that PW-22, Circle Inspector of Police, Hanamakonda, received express memo and took up the investigation, visited the scene of offence on 09.07.2007, observed the scene and re-examined the witnesses, who reiterated their statements which were earlier recorded by the ASI and SI of Hanamakonda; that, on 12.07.2007 at 1700 hours, PW-22 arrested A1 to A3 at Rohini

Hospital, Subedari, Hanamkonda, brought them to PS, Hanamonda at 1800 hours, by informing the grounds of arrest, produced them before the Court and that they were remanded to judicial custody. That, on 19.07.2007, A4 to A7 have surrendered before the Court and were released on bail. That, PW-18 who conducted autopsy over the dead body of the deceased and issued post mortem report opining that the cause of death was due to burns.

3. Based on the charge sheet filed and the material collected and produced by the police before it, the Court below has framed the following charges:

“Charge No.1: That you A-1 on 4.7.2007 at 1330 hours at Kumarpally, Hanamkonda, committed murder intentionally (or knowingly) by poured kerosene and set fire and causing the death of the deceased Spandana while undergoing treatment succumbed to the burn injuries on 7.7.2007 at 2200 hours at Osmania General Hospital, Hyderabad, and thereby committed an offence punishable under Section 302 of the Indian Penal code and within my cognizance.

Charge No.2: That you A-1 to A-7 on the above date, time and place mentioned in charge No.1 supra, being the husband and relatives of the deceased Spandana, subjected her mentally and physically for want of additional dowry, poured kerosene on her and lit fire with an intention to kill and that you thereby committed an offence punishable under Section 498-A of the Indian Penal Code and within my cognizance.

Charge No.3: That you A-1 to A-7 on 8.12.2004 at the aforesaid place, as mentioned in the charge No.1, after commencement of this Act took dowry of Rs.1,20,000/- and other household articles worth Rs.80,000/- from the parents of the said deceased, and that you thereby committed an offence punishable under Section 3 of the Dowry Prohibition Act and within my cognizance.

Charge No.4: That you A-1 to A-7 prior to 4.7.2007 and also on 4.7.2007 at the aforesaid place, as mentioned in the charge No.1, demanded the said deceased to bring additional dowry from her parents and that you thereby committed an offence punishable under Section 4 of the Dowry Prohibition Act and within my cognizance”.

4. As the plea of the accused was one of denial, they were subjected to trial, during which the prosecution has examined PWs 1 to 22, got exhibits Ex.P1 to P19 marked and produced MOs. 1 to 5. On behalf of the accused, they have examined DW-1 and got exhibits D1 to D6 marked.

5. On consideration of the oral and documentary evidence, the Court below has disposed of the case in the manner as stated hereinbefore.

6. At the hearing, Mr.Venkat Rao Ravulapalli, learned counsel for the appellant, made the following submissions:

- i. As Ex.P15 – Dying Declaration is the result of tutoring and is not corroborated by the evidence of prosecution witnesses, the Court below cannot place reliance upon it for convicting the appellant. As the doctor who gave a certificate in Ex.P-15, dying declaration, about the alleged fitness of the patient/deceased, was not examined by the prosecution, the Court ought not to have relied upon the dying declaration for the said reason alone. In support of these submissions, the

learned counsel relied upon the judgment in **KANCHY
KOMURAMMA Vs. STATE OF A.P.**¹

ii. The investigation officer failed to send MOs. 1 to 5 for forensic examination and that the same being a serious lacuna, the Court below ought not to have convicted the appellant.

iii. PW-1 himself in his deposition (marked as Ex.D1) in S.T.C.No.66 of 2008 has categorically stated that the deceased has committed suicide and, therefore, the lower Court ought to have disbelieved the testimony of PW-1, which is in contradiction with Ex.D1.

7. Opposing the above submissions, the learned Public Prosecutor (TS), has sought to support the judgment of the lower Court. We have carefully considered the respective submissions of the learned counsel for the parties, with reference to the evidence on record.

8. Though the appellant and the remaining accused i.e. A-2 to A-7, who are the mother, sisters and brothers-in-law of A1, were acquitted of the charges for the offences under Section 498 A IPC and Sections 3 and 4 of Dowry Prohibition Act, the appellant alone was convicted for the offence punishable under Section 302 I.P.C., while other accused were acquitted of the said offence.

¹ 1995 Supp (4) SCC 118.

9. As rightly observed by the lower Court, the case of the prosecution should either stand or fall on the dying declaration. Therefore, it is unnecessary for us to delve into the ocular evidence of prosecution witnesses, in order to know whether the appellant is guilty of offence of murder.

10. The incident has taken place at about 1.15 p.m. On the requisition sent by the police outpost in MGM Hospital, Warangal, PW-19 – the Judicial First Class Magistrate, Prohibition and Excise, Warangal, went to the hospital and recorded the dying declaration of the victim marked as Ex.P15. Before referring to his evidence, we would like to refer to the contents of Ex.P15. Before PW-19 started recording the dying declaration, the doctor made the following endorsement:

“Patient is conscious. Speaking coherently and she is fit (sic) condition to give statement.

Sd/-

04.07.2007”

Below the said endorsement, PW-19 has stated that at the time of recording the statement, the duty doctor and nurse were present and he has put formal questions such as the names of the patient and that of her husband, her age, her native place, whether she is literate, occupation of her husband and number of children she has. He has also put a question as to whether the patient knows him, for which, she has given a reply. Based on the answers given by the patient to

the said questions, PW-19 was satisfied that the patient was conscious, being able to understand the questions and give answers and is speaking coherently. At the end of the statement, the doctor has again made the following endorsement.

“Patient is conscious. Speaking coherently while recording the statement”.

Sd/-
04.07.2007”

The reason for us to refer to the above aspects in detail, is that the learned counsel for the appellant has repeatedly submitted that the doctor has not given a certificate at the end of the dying declaration that she was in a fit condition to make the statement. Before the actual statement was recorded, the doctor has used the words ‘fit condition to give statement’. He did not repeat the same words at the end, but the fact that he has stated that the patient is conscious and speaking coherently while recording the statement, is sufficient for the Magistrate to be satisfied that the patient was in a fit condition to make statement. Moreover, PW-19 Magistrate himself on putting preliminary questions, was satisfied that the patient was not only conscious but also giving answers and speaking coherently.

11. Coming to the evidence of PW-19 - Magistrate, he has categorically stated that the patient was coherent and in a fit condition for recording the statement and that the doctor also gave

certificate to that effect. Significantly in the cross-examination, the defence has not even suggested to the doctor that the statement that the patient was in a fit condition, was incorrect.

12. As regards the judgment in **KANCHY KOMURAMMA** (supra), on which heavy reliance is placed by the learned counsel for the appellant, that was a case where the words 'the patient is in a fit state of mind to depose' purportedly written by the doctor, were found in blue ink, while the entire dying declaration was prepared in green ink. The Apex Court also found that PW-1, the mother of the deceased herself, has stated that the condition of the patient was not good and that she was not in a fit condition. For those reasons, the Hon'ble Supreme Court has expressed a serious doubt about the fit condition of the patient.

13. As noted hereinbefore, not only the doctor has clearly certified at the beginning of the statement that the patient was in a fit condition to make statement, but also at the end of the statement, he has clearly stated that the patient was not only conscious but also making coherent statement. Added to this, there was no whisper of suggestion to PW-19 that the patient was not in a fit condition to make the statement.

14. The submission of the learned counsel for the appellant that the prosecution failed to summon the doctor who gave the statement, is without merit for the reason that the defence has not subjected PW-19 to any cross-examination on the fitness of the patient. Therefore, the prosecution must have rightly thought that there was no need to examine the doctor. If at all the defence wanted the doctor to be summoned, it ought to have made such a request. Interestingly, defence has examined the Additional R.M.O. of M.G.M. Hospital as its witness. In our opinion, the failure of defence, either to seek summoning of the doctor to certify on the fit condition of the deceased or examining him as their witness and instead, examining the additional R.M.O. itself, would show that their plea raised in this appeal about the fit condition or otherwise of the deceased, is a pure afterthought.

15. As regards the evidence of DW-1, the learned counsel for the appellant has drawn our attention to the statement in cross-examination, which reads - 'witness adds Spandana was unable to speak'. The said witness was examined by the defence to speak about medico-legal case sheet marked as Ex.D5 and D6 pertaining to the appellant/accused No.1 and the deceased, in order to drive home the fact that the injuries were received accidentally by falling of saree on stove. Indeed, in the context in which the said witness was examined, it was wholly unnecessary for him to make a statement about the

ability or otherwise of the deceased to speak. Such a statement was not made in his chief examination and it is only in the cross-examination made by the Additional Public Prosecutor about the writings in MLCs of the appellant and the deceased, the witness has voluntarily added about the alleged inability of the deceased to speak. We have therefore, no doubt that DW-1 is pressed into service to create some semblance of doubt about the fitness of the deceased to give a statement.

16. With regard to the submission of the learned counsel that the material objects were not sent for forensic examination, no doubt, there is a lacuna on the part of the investigation on this aspect. However, PW-18, the doctor who conducted autopsy, was not subjected to cross-examination as to whether kerosene smell was emanating from the body or not. When the Court relies upon the contents of the dying declaration, the same can form the sole basis for convicting the accused, even in the absence of any corroborative evidence such as FSL report. When the victim has spoken about the cause of death and the same is believed by the Court, no further question would arise, unless there is contra evidence available on record, rendering contents of the dying declaration highly doubtful. Such evidence is not brought forth by the defence in the case on hand.

17. With regard to the submission of the learned counsel based on Ex.D-1, the deposition of PW-1 given in S.T.C.No.66 of 2008, no doubt, in his chief examination, PW-1 referred to the death of his sister as suicide. However, when PW-1 was confronted with the said statement, he denied having made such a statement. Be that as it may, it is not the case of the appellant that his wife has committed suicide. On the contrary, as reflected from the suggestions given to the prosecution witnesses and also the stand taken by the appellant in Section 313 Cr.P.C. examination, he has taken the stand that it was a case of accidental death on account of the saree coming into contact with the flames of the stove. Thus, Ex.D1 is no way helpful to the defence.

18. With respect to the submission of the learned counsel that PW-19, the Magistrate, has admitted that when he went to the hospital, he found PW-9 and the brother of the victim along with the victim and that, therefore, it is reasonable to presume that the deceased was tutored to give her statement against the accused. We are afraid, we cannot accept this submission because, when a person was admitted in hospital with burns in serious condition, it is natural for the family members to be by the side of the patient. Therefore, we do not find anything unusual in this respect. PW-19 has deposed that on his asking them, the mother and brother of the deceased have left the room before he started recording dying declaration. We have

also carefully read the dying declaration, which in our opinion is very natural *sans* any exaggeration or embellishments. The dying declaration is treated as an exception to the rule of hearsay evidence, based on the doctrine that no person would like to meet his maker with a lie on his lips. Therefore, high probative value is attached to dying declaration, unless strong reasons exist for the Court to discard it. As we are fully satisfied that the reasons such as the patient not being in a fit condition or the patient being tutored, which are generally considered as reasons to disbelieve the dying declaration, do not exist in the present case, we have no reason whatsoever, to discard Ex.P15 – dying declaration. The Court below therefore, has rightly placed reliance on the dying declaration for handing out conviction to the appellant. On the analysis as above, we have no reason to interfere with the judgment of the lower court.

19. The appeal is, accordingly, dismissed.

(C.V.Nagarjuna Reddy, J)

(Gudiseva Shyam Prasad, J)

Date: 30th July, 2018

msb

